

REMARKS:

Applicant thanks the Examiner for the Advisory Action mailed on November 2, 2005. The Applicant requests that the amendments submitted on October 11, 2005, not be entered and that the enclosed Preliminary Amendment be entered instead. In response to the Office Action of August 10, 2005, the Applicant has amended claims 1, 7, and 17. After entry of this Amendment, claims 1, 2, 7, and 10-17 are pending in the instant application. Claims 3-6 and 8-9 have been cancelled. The Applicant respectfully requests entry of the enclosed Amendment and the Examiner's consideration of these remarks.

In the Office Action of August 10, 2005, the Examiner first rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by Jones, United States Patent No. 6,019,244. The Examiner asserts that Jones discloses a protective liner that is capable of being used in a storage area of a vehicle, comprising a floor (22, Figure 2 and column 4, lines 57-63), walls (16), a sleeve (20), and a resilient frame (21 and column 2, lines 12-15), made from a flexible, substantially impermeable material (column 2, lines 2-7).

In response, the Applicant has amended claim 1 to recite "a flexible and substantially impermeable floor having a perimeter and substantially forming a plane," and "a flexible and substantially impermeable wall affixed to said sleeve wherein the wall is substantially normal to the plane formed by the floor." The amendments to claim 1 have support in the drawings and specification, specifically on pages 5-6 of the original specification. Jones does not disclose a protective liner for a vehicle storage area wherein the wall is substantially normal to the plane formed by the floor. Because this limitation is not found in the Jones reference, the Jones reference does not anticipate claim 1 as amended.

The Examiner next rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Cesare, United States Patent No. 6,105,842. The Examiner asserts that Jones discloses the protective liner but does not teach that it is the shape and size of a cargo compartment of a motor vehicle. Cesare discloses a protective liner in the shape of a pickup truck bed to allow use of the bed for storing possessions (column 1, line 66 to column 2, line 3). The Examiner further contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a protective liner in the shape of a pickup truck bed as disclosed by Cesare with the protective liner disclosed by Jones to allow use of the pickup truck bed for storing possessions.

The Applicant believes that the Examiner's rejection of claim 2 is improper for two reasons. First, the Examiner has failed to establish a *prima facie* case of obviousness, since there is no suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify Jones in view of Cesare or otherwise to combine the teachings of these two references. See MPEP § 706.02(j). "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992); see also MPEP § 2143.01(III). Specifically, the Examiner has asserted that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a protective liner in the shape of a pickup truck bed as disclosed by Cesare with the protective liner disclosed by Jones to allow use of the pickup truck bed for storing possessions." There is no teaching or suggestion in either reference or in the knowledge generally available to one of ordinary skill in the art to combine these references in the way suggested by the Examiner. In absence of some suggestion or motivation to combine these references in this way, the Applicant believes that the Examiner has not established a *prima facie* case of obviousness. Furthermore, Jones is non-analogous art, is not in the field of Applicant's endeavor, and is not

reasonably pertinent to the particular problem addressed by the present invention. *See* MPEP § 2141.01(a). Jones states in its disclosure that “the bowl is preferably substantially leakproof, i.e. will hold liquid for at least ten or fifteen minutes to allow the bowl to be used to provide an animal with drinking water.” (Col. 2, lines 38-41.) This shows that Jones is drawn to an entirely different problem in an entirely different art. Namely, it is designed to be a small, lightweight, portable, and *temporary* receptacle for liquids. In contrast, the instant invention claims substantial impermeability of the floor, sleeve, and wall portions of the structure. In short, the Jones device is a temporary receptacle for fluids in environments where leaks are tolerable. In contrast, the instant invention is for use in environments where such leaks would work to defeat the commercial value of the invention. For these reasons, the Examiner’s combination of the Jones and Cesare references is improper since Jones is non-analogous art, and there is no suggestion to combine these references. In addition, neither Jones nor Cesare discloses a wall substantially normal to the plane formed by the floor, as is now recited in claim 1, from which claim 2 depends, therefore, these references do not anticipate claim 2.

The Examiner next rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Behlman, United States Patent No. 5,215,205. The Examiner asserts that Jones discloses the protective liner as discussed in paragraph 3 above but does not teach that the liner is removably secured to the storage area. Behlman discloses a protective liner for use in the cargo area of a vehicle and further discloses that the liner is secured in the cargo area by the use of a hook and loop type gripper (42, Figure 1 and column 3, lines 57-64). The Examiner further asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a hook and loop type gripper as disclosed by Behlman with the protective liner disclosed by Jones to allow securing of the liner in position in the cargo area.

In response, Applicant again argues that the combination of Jones and Behlman does not anticipate claim 7 for the same reasons that Jones and Cesare did not anticipate claim 2, as described

above. There is no suggestion within either of these references to combine the two references.

Further, Jones is non-analogous art as described above. For these reasons, Jones and Behlman do not anticipate claim 7, and the Applicant respectfully requests that the Examiner withdraw this rejection on that basis. In addition, in an effort to advance prosecution and more clearly claim that which the Applicant regards as his invention, the Applicant has amended claim 7 to include “a flexible, upright, and substantially impermeable wall.”

The Examiner next rejected claims 10-12 under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Samsel, United States Patent No. 5,810,194. The Examiner asserts that Jones discloses the protective liner of claim 1 having an uncollapsed and collapsed orientation (Figure 6) but does not teach use of a container for the collapsed liner. Samsel discloses a protective liner with a container for storage and transportation of the liner (30, Figure 4, column 3, lines 48-51) with a closure (32) and a carrying strap (34). The Examiner further contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a container for the liner with a closure and a carrying strap as disclosed by Samsel with the liner disclosed by Jones to provide for easy storage and handling of the collapsed liner.

Jones and Samsel do not anticipate claims 10-12, as there is no suggestion found in either reference to combine these two references, and both Jones and Samsel are non-analogous art. Applicant refers the Examiner to the arguments detailed above with respect to the Jones reference being non-analogous art. With respect to Samsel, it is similar to Jones in that it is directed to a different class of problem than the instant invention was designed to solve. With Samsel, portability and compactness for carrying on an individual person is paramount. (*See* Col. 2, lines 30-35.) In addition, Samsel is also temporary in its intended use, as the disclosure suggests disposability as a primary feature. (*See* Col. 3, lines 25-36.) Thus, since there is no suggestion in either reference to combine Jones and Samsel, and because both references are non-analogous pieces of art, these references do not anticipate claims 10-12 of the instant application, and the Applicant respectfully

requests that the Examiner withdraw the rejections of these claims based on these references. In addition, claims 10-12 depend from claim 1, now amended, which recites “wherein the wall is substantially normal to the plane formed by the floor.” Neither Jones nor Samsel discloses this limitation, therefore, these references do not anticipate claims 10-12.

The Examiner next rejected claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Jones and Behlman as applied to claim 7, further in view of Cesare. The Examiner contends that Jones and Behlman disclose the liner of claim 7 but do not teach that it is the shape and size of a cargo compartment of a motor vehicle. The Examiner further contends that Cesare discloses a protective liner in the shape of a pickup truck bed to allow use of the bed for storing possessions (column 1, line 66 to column 2, line 3). The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a protective liner in the shape of a pickup truck bed as disclosed by Cesare with the protective liner disclosed by Jones to allow use of the pickup truck bed for storing possessions.

In response to this rejection, Applicant notes that there are no suggestions found within any of these three references to combine them in any way as suggested by the Examiner. Further, as described above, Jones is non-analogous art and therefore cannot anticipate claim 13 in combination with Behlman and Cesare. For these reasons, Applicant respectfully requests that the Examiner withdraw the rejection of claim 13 based upon these references.

The Examiner next rejected claims 14-16 under 35 U.S.C. § 103(a) as being unpatentable over Jones and Behlman as applied to claim 7 above, and further in view of Samsel. The Examiner further contends that the protective liner of claim 7 having an uncollapsed and collapsed orientation (Figure 6) is disclosed but Jones and Behlman do not teach use of a container for the collapsed liner. The Examiner asserts that Samsel discloses a protective liner with a container for storage and transportation of the liner (30, Figure 4, column 3, lines 48-51) with a closure (32) and a carrying strap (34). The Examiner further asserts that it would have been obvious to one of ordinary skill in

the art at the time the invention was made to have incorporated the use of a container for the liner with a closure and a carrying strap as disclosed by Samsel with the liner disclosed by Jones to provide for easy storage and handling of the collapsed liner.

In response, Applicant avers that this rejection is improper in light of a lack of suggestion found in any reference to combine these three references, as well as the facts, argued above, that Jones and Samsel are both non-analogous art references. For these reasons, substantially argued above, Applicant respectfully requests that the Examiner withdraw the rejection of claims 14-16 based upon these references.


Finally, the Examiner rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Behlman, Cesare, Samsel and Larga, et al., United States Patent No. 6,167,898. The Examiner asserts that Jones, Behlman, Cesare and Samsel disclose the protective liner comprising a floor, a sleeve, and a resilient frame, made from a flexible substantially impermeable material, having a shape and size substantially the same as the shape and size of a vehicle storage area, removably attached to a vehicle storage area, having an uncollapsed and collapsed orientation and a container with a closure for protecting and transporting the liner as discussed above. The Examiner further asserts that Jones, Behlman, Cesare, and Samsel do not teach that the container has two straps. The Examiner contends that Larga, et al. discloses a container for protecting and transporting a protective liner with two carrying straps (46, 47, Figure 10, column 6, lines 56-57 and 65-67.) The Examiner further contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a container for protection and transportation of the liner having two carrying straps as disclosed by Larga, et al. with the liner disclosed by Jones, Behlman, Cesare and Samsel to provide for easier and more comfortable handling of the collapsed liner.

In response, Applicant notes first that among these five references, there can be found no suggestion within any of them to combine the references in the way suggested by the Examiner. In

fact, there is no suggestion found in any of the references to combine any one reference with any of the other references. For this reason alone, this rejection is improper. Further, as noted above, Jones and Samsel are non-analogous art references. Additionally, Larga, et al. is also non-analogous art. Larga, et al. is classified in a completely different class and has no relation whatsoever to the problems addressed by the instant invention nor the technology used to combat such problems. The Larga, et al. reference is, quite simply, a tent, and is drawn to issues surrounding temporary outdoor facilities, whether for recreation or other purposes. For these reasons, Applicant respectfully requests that the Examiner withdraw the rejection of claim 17 based upon Jones, Behlman, Cesare, Samsel, and Larga, et al. Further, in an effort to more distinctly claim that which the Applicant regards as his invention, the Applicant has amended claim 17 to include "a flexible, upright, and substantially impermeable wall."

In light of the amendments and remarks in this paper, Applicant believes that the instant application is presently in condition for immediate allowance and issue. Applicant respectfully requests the Examiner's consideration of these issues and invites the Examiner to contact Applicant's undersigned Attorney with any questions.

Respectfully submitted,
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